

EXHIBIT 24

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF ILLINOIS

3
4 CASE NUMBER: 3:12cv-52-NJR-SCW

5
6 IN RE DEPAKOTE CASES:

7 D.B., a minor by IRINA BURNETT,
8 individually and as next friend of D.B.

9 Plaintiff,

10 vs.

11 ABBOTT LABORATORIES, INC.,

12 Defendant.

13
14
15
16 DEPOSITION

17 OF

18 NATHANIEL H. ROBIN, M.D.

19 November 16, 2017

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21
22
23 REPORTED BY: Heather Spier

24 Certified Court Reporter,

25 and Notary Public

1 history in here about Mr. or Mrs.
2 Burnett's cognitive functioning or
3 cognitive functioning of others in the
4 family; is that correct?

5 A. Correct.

6 Q. Is that something that you
7 would typically be interested in when
8 you're evaluating somebody who has
9 cognitive deficits?

10 A. Yes. On a clinical basis,
11 yes.

12 Q. Okay. But in this context you
13 didn't think it was important?

14 A. Correct.

15 Q. I also didn't see any
16 reference to any alcohol usage by Ms.
17 Burnett during the pregnancy. Is that in
18 your report?

19 A. Not that I recall.

20 Q. Do you remember being aware of
21 Ms. Burnett using alcohol during
22 pregnancy?

23 A. No.

24 Q. Could that be important to
25 your evaluation?

1 A. Evaluation in the clinical
2 context or evaluation for the question I
3 was asked in this case?

4 Q. Let's do both. In the
5 clinical context would that be important?

6 A. Yes.

7 Q. Would it be important to you
8 in this context?

9 A. Not as important.

10 Q. Still relevant, though?

11 A. Potentially.

12 Q. What can exposure to alcohol
13 in early parts of the pregnancy result in
14 in the baby?

15 A. So there's a spectrum of
16 anomalies associated with alcohol exposure
17 prenatally, ranging from full-blown fetal
18 alcohol syndrome to something called fetal
19 alcohol or alcohol-related disorders,
20 which is more of a cognitive profile. Do
21 you want me to go on?

22 Q. That's fine.

23

24 (Whereupon, Defendant's
25 Exhibit 9 was marked for

1 identification.)

2

3 Q. This is an exhibit that was
4 previously marked as Exhibit 13 in the
5 deposition of Dr. Edwards I believe. It's
6 an excerpt of medical records?

7 MS. WILLIAMSON: Could it have
8 maybe been Clare McLain?

9 MR. CHILDS: Yes. Yeah, I
10 thought it was Edwards. But it is
11 whatever it is.

12 Q. So have you seen these records
13 before, Dr. Robin?

14 A. I may have. I don't recall.

15 Q. Okay. So on the front page,
16 the first page of it, there is a list of
17 problems. Second one says "smoker." Do
18 you see that?

19 A. Yes.

20 Q. And did you know that Ms.
21 Burnett was a smoker throughout pregnancy?

22 MS. WILLIAMSON: Objection.

23 A. I think I do recall that.

24 Q. And then the Number 3 there,
25 this says "genetics," and it says,

1 "exposure to Depakote and cogentin,
2 cigarettes and ETOH." ETOH means alcohol,
3 correct?

4 A. Yes.

5 Q. If you turn to the second
6 page, and under Identified Risks -- let me
7 note that this is dated -- strike all of
8 this.

9 The first page was dated in
10 April of 1999. The second page is also in
11 April of 1999. And under Identified Risks
12 do you see it says "smokes cigarettes."
13 And it says "use of alcohol in early
14 pregnancy"?

15 A. Yes.

16 Q. And we don't have to go
17 through the rest. But you can see that
18 there are references to alcohol?

19 A. Yes.

20 Q. And you didn't make any
21 reference to that in your report, correct?

22 A. No.

23 Q. Were you aware of that before
24 just now?

25 A. It was mentioned to me in some

1 discussions with counsel, so I -- if I --
2 I did not see it -- or did not recall it
3 in the documents, from the documents I
4 reviewed.

5 Q. Did you consider putting it in
6 your report?

7 A. No.

8 Q. And Danial does certainly have
9 cognitive delay, correct?

10 A. Correct.

11 Q. What can smoking do to a
12 fetus, a mother smoking?

13 A. Again, a complicated question,
14 but primarily causes small size.

15 Q. I also didn't see any notation
16 in your report of a possible history of
17 birth defects in Ms. Burnett's family.
18 Did I miss that?

19 A. I did not mention that.

20 Q. Were you aware of that?

21 A. Again, I've heard reference to
22 it.

23 Q. That would be -- let me ask
24 the question two ways. In your clinical
25 practice that would certainly be relevant?

1 A. Yes.

2 Q. In this job you don't consider
3 it important?

4 A. In this particular -- in the
5 question I was being asked it had less
6 relevance, specifically because there was
7 no mention of spina bifida being
8 associated with it, and there were no
9 other birth defects noted in this child.

10 Q. Let me mark as Exhibit 10 the
11 deposition of Dr. Edwards.

12

13 (Whereupon, Defendant's
14 Exhibit 10 was marked for
15 identification.)

16

17 Q. You reviewed this deposition
18 in preparation for your report, right?

19 A. Yes.

20 Q. And if you can turn first to
21 the 23rd page of the document, Page 87 of
22 the deposition. Are you there, sir?

23 A. Yes.

24 Q. So Dr. Edwards is testifying
25 at Page 87, Lines 1 through 10. I'm just

1 going to read it. "She had some other
2 risk factors in her family, some other --
3 per my records I think I read some of the
4 other family members had neural tube and
5 some other type defects throughout the
6 family. So, I mean, the precise cause of
7 that baby's problem -- and just a sad
8 thing." Did I read that correctly?

9 A. Yes.

10 Q. And if you could turn over to
11 Page 149 of the deposition. It's the 38th
12 page of the document.

13 A. Yes.

14 Q. And Page 149, Lines 9 through
15 11. Strike that. Lines 9 through 12.
16 "You've mentioned and your notes reflect
17 that Ms. Burnett had a family history that
18 included some potential birth defects in
19 other children?" Answer: "That's what she
20 reported to me, yes."

21 Did I read that correctly?

22 A. Yes.

23 Q. You didn't make mention of any
24 of that in your report, did you?

25 A. No. I didn't see it

1 substantiated elsewhere.

2

3 (Whereupon, Defendant's
4 Exhibit 11 was marked for
5 identification.)
6

7 Q. I'm marking as Exhibit 11 a
8 medical record from May 12, 1999. Says
9 Irina McCall. That was Ms. Burnett's name
10 at the time, as I understand it. And it's
11 a note from Dr. Edwards. That was the
12 deposition we were just reading, correct,
13 Dr. Robin?

14 A. Can you say it again, I'm
15 sorry?

16 Q. Sure. It's the note from Dr.
17 Edwards, who's the person's deposition we
18 were just reading.

19 A. Yes.

20 Q. And, I don't know, maybe about
21 nine or ten lines down it says, "in
22 discussion with her there has been
23 multiple problems with birth throughout
24 her family. Almost all of her family has
25 had babies die at birth of different

1 problems." Did I read that correctly?

2 A. Yes.

3 Q. Okay. Some babies with spina
4 bifida die at or near birth?

5 A. Yes. Yes.

6 Q. So this is not inconsistent
7 with there being neural tube defects in
8 the family, is it?

9 MS. WILLIAMSON: Objection,
10 form.

11 A. Yes, you are correct. It's
12 not inconsistent.

13 Q. And Dr. Edwards is who's
14 actually treated Ms. Burnett, correct?
15 You have not treated Ms. Burnett?

16 A. Correct.

17 Q. And Dr. Edwards testified that
18 he remembered neural tube defects --

19 MS. WILLIAMSON: Object to the
20 form. It mischaracterizes his testimony.

21 A. Correct.

22 Q. You didn't put any of that in
23 your report?

24 A. Correct.

25 Q. A family history of that kind

1 of birth defect would be important in both
2 clinical and this practice, wouldn't you
3 think?

4 A. If it was substantiated. I
5 didn't think it was substantiated. The
6 way -- the way it's alluded to here just
7 made it seem like, to use a legal term,
8 hearsay. It wasn't substantiated in other
9 reports, and there was no mention of it in
10 other reports.

11 Q. Did you make any effort
12 whatsoever to investigate further?

13 A. I'm not sure how I would.

14 Q. Did you ask Ms. Burnett for
15 more information about what she apparently
16 told Dr. Edwards?

17 A. No.

18 Q. Discussing in section four of
19 your report -- and, again, I'm not going
20 to go into a lot of details right now.
21 But it's the medical history of Danial
22 Burnett. That, again, was based on a
23 record review, correct?

24 A. Correct.

25 Q. And, again, it's not intended

1 effect from valproic acid.

2 Q. Could there also be a primary
3 effect from the alcohol use?

4 MS. WILLIAMSON: Objection,
5 foundation that she actually used alcohol.

6 A. So if she used alcohol,
7 alcohol -- prenatally, alcohol could
8 contribute to cognitive defects. Like I
9 said, I didn't see further substantiation
10 of that.

11 Q. I mean, we can -- let's go
12 back to that record, then because there
13 were two or three other listings on there.

14 A. I mean, I'm willing to agree
15 with you -- if you're saying that the
16 record in front of me says that, I agree
17 with you the record in front of me says
18 that. I'm just saying that I didn't see
19 other reports mentioning that as a
20 significant contributor.

21 Q. Okay. Did you see reports in
22 her record attributing Danial's cognitive
23 delays to anything other than spina
24 bifida?

25 A. Not that I recall.

1 information that you've agreed would be
2 relevant to your evaluation in answering
3 that question --

4 A. Correct.

5 Q. -- than you do in the legal
6 context, in this context?

7 A. I apologize. Correct.

8 Q. If you could pull out your
9 report. You don't have to. If you need
10 to look at it, you can. Let's put it that
11 way.

12 Page 13 of your report, which
13 is Exhibit 5, there's a section that's
14 listed as your opinions. Is this sort of
15 the core things that you concluded?

16 A. Yes.

17 Q. And Paragraph 2 says, "there's
18 no known history of genetic related birth
19 defects in the family history of the
20 biological mother or father," correct?

21 A. Correct.

22 Q. Would you say that that is
23 consistent with the testimony of Dr.
24 Edwards and the exhibit from -- Exhibit 11
25 that we looked at earlier?

1 A. No. He said something -- he
2 says there is a history of early death and
3 other things.

4 Q. So that would be inconsistent
5 with what you put in your report?

6 A. That would be inconsistent
7 with what I put in the report.

8 Q. And then the second sentence
9 of that Opinion Number 2 says,
10 "furthermore, there are no findings in
11 Danial to suggest an underlying genetic
12 syndrome is the cause of his NTDs and
13 major congenital malformations."

14 You did not perform a
15 dysmorphologic physical exam of Danial to
16 confirm that, correct?

17 A. Correct.

18 Q. You relied on a few minutes of
19 the video and the records?

20 A. Correct.

21 Q. Last week or a couple of weeks
22 ago in the Erpelding deposition you
23 testified that a physical examination has
24 become less and less important as genetic
25 testing has gotten better and better.

1 C E R T I F I C A T E

2

3

4 STATE OF ALABAMA

5 MADISON COUNTY

6

7 I hereby certify that the
8 above and foregoing deposition was taken
9 down by me in stenotypy, and the questions
10 and answers thereto were reduced to
11 typewriting under my supervision, and that
12 the foregoing represents a true and
13 correct transcript of the deposition given
14 by said witness upon said hearing.

15 I further certify that I am
16 neither of counsel nor of kin to the
17 parties to the action, nor am I in anywise
18 interested in the result of said cause.

19

20

21

22

23 Heather Spier

24 COMMISSIONER-NOTARY PUBLIC

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